



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

August 8, 2013

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Gustavo Paz**
Tax Registry No. 916405
Highway Unit 5
Disciplinary Case No. 2012-8009

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on June 10, 2013 and was charged with the following:

DISCIPLINARY CASE NO. 2012-8009

1. Said Police Officer Gustavo Paz, while assigned to the 69th Precinct, on November 22, 2011, did fail and neglect to appear at the Brooklyn South Violations Bureau as required and as a result, twelve (12) summons, nine (9) motorist, was dismissed.

**Interim Order 25s.08, Page 4,
Paragraphs 23-25**

**REVISION OF PATROL GUIDE 211-05
"PROCESSING NOTIFICATIONS TO
APPEAR AT COURT AND OTHER
GOVERNMENT AGENCIES"**

P.G. 203-10, Page1, Paragraph 5

**PUBLIC CONTACT – PROHIBITED
CONDUCT
GENERAL REGULATIONS**

In a Memorandum dated July 12, 2013, Deputy Commissioner Martin G. Karopkin found Police Officer Gustavo Paz Guilty of Specification No. 1, in Disciplinary Case No. 2012-8009. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Police Officer Paz's misconduct in the instant matter warrants the forfeiture of fifteen (15) vacation days, as a disciplinary penalty.


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

July 12, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Gustavo Paz
Tax Registry No. 916405
Highway Unit 5
Disciplinary Case No. 2012-8009

The above-named member of the Department appeared before me on June 10, 2013, charged with the following:

1. Said Police Officer Gustavo Paz, while assigned to the 69th Precinct, on November 22, 2011, did fail and neglect to appear at the Brooklyn South Violations Bureau as required and as a result, twelve (12) summons, nine (9) motorist, was dismissed.

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P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
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The Department was represented by Jessica Brenes, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charge and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent, an 18-year member of the Department, is currently assigned to Highway Unit 5. In 2010, he was transferred from Brooklyn South Task Force to the 69 Precinct after submitting an Activity Report with inaccurate entries. According to Respondent, he made the inaccurate entries because he had been out sick and upon returning to work he needed to rush to meet the Activity Report submission deadline. He tried to fill out the Activity Report from memory without referring to his Activity Log. He received charges and specifications and pled guilty, receiving a 30-day penalty.

While at the 69 Precinct, Respondent was assigned to the summons auto, traffic safety. He stated his responsibility was to "vigorously enforce the traffic laws of the state." Respondent received a notification to appear at Brooklyn South Traffic Violations Bureau (TVB) on November 21, 2011. Respondent did not go to TVB that day because he was assigned to drive a Department bus from the command to his deputy inspector's mother's funeral. Respondent did not believe that there was a roll call on that day.

Respondent affirmed that he also received a notification to appear at TVB the following day (November 22, 2011). Respondent testified that to the best of his

recollection he had received the notification three or four weeks prior to the scheduled appearance date. Because members assigned to the summons auto started off-hours, Respondent did not usually stand roll call and instead just checked in at the desk. While checking in at the desk, he would be reminded of other commitments, such as court notifications. Respondent did not receive any notification on the day in question, so he conducted his regular assignment in the summons auto, writing 12 to 15 summonses. A few days later, while checking his notes or other notifications, he realized that he missed his TVB appearance date. He made his supervisors aware of his failure. His supervisors had not been aware before he informed them. Respondent continued to work in the summons auto.

After two years in the 69 Precinct, Respondent applied for a transfer to the Highway District. His transfer required him to be interviewed by the Chief of Transportation's Office. In the interview, he disclosed that he had failed to appear for court. He explained in the interview that he failed to appear in court because he had made a mistake, it was not something he did intentionally and he would make sure that it never happened again. His transfer proceeded without delay.

Respondent has been assigned to Highway Unit 5 since December 2012. Since then, he has written a little over 50 summonses per month; amounting to approximately 300 summonses total. During that period, he has testified in Staten Island TVB three or four times and has returned to Brooklyn TVB on numerous occasions. He has not missed a court date.

On cross-examination, Respondent confirmed that at the time of the incident he had been a police officer for approximately 16 years and had been assigned to summons

auto/traffic safety for a month or two. He had issued many summonses while on patrol and was familiar with the procedures of attending court. He usually received written notifications for court appearances three weeks before the date of the appearance; and received such notifications at roll call. He would usually take the notification and hang it up in his locker on a magnet as a way to remind himself to go to court. He received and signed for the notification for November 22, 2011. He hung the notification in his locker, but he subsequently put another notification up in front of it and failed to see it. After missing the court date, he made a greater effort to remind himself by entering his court dates in a calendar on his cell phone.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on June 30, 1995. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has recommended a penalty involving the loss of 10 vacation days. Respondent argues that this penalty is too high for what he acknowledges is a mistake. Respondent explained that he is a very active officer who has issued many summonses in his career. On this issue he notes that even while these charges were pending he was promoted to a special unit, Highway Unit 5, in part because he had demonstrated his ability to issue summonses.

Respondent also notes that during his assignment as summons officer he issued an average of 50 summonses a month.

Respondent notes that during that period of time he usually was scheduled to go to TVB once a week. He had been scheduled for traffic court on Monday, November 21, 2011, but he had been excused because he was needed to drive a vehicle at a funeral. Because he usually went to TVB only once a week he forgot about the TVB appearance on Tuesday, November 22, 2012, the day in question herein.

Respondent also noted that he was usually reminded of his court appearances by the precinct, but that did not occur on that day. On the other hand, Respondent agrees that he was notified of this TVB appearance date well in advance. He also noted that he has taken steps to insure that he does not forget such court appearances in the future. He noted for instance that in the past he would merely post the notice to appear, in his locker. He also noted the shortcoming of doing that was that the notice might have been covered over by other notices, which might have happened in this case. Respondent indicated that now he also lists these appearances on the calendar in his cell phone.

The Department has a responsibility to see that summonses issued by members are properly adjudicated. The Department also has a right if not a responsibility to set high standards in this regard. In this case the failure of Respondent to appear at traffic court resulted in the dismissal of a number of summonses.

Several cases on this issue, which have been approved, shed light on the appropriate level of penalty:

Case No. 2011-5159, June 27, 2012, in which a six-year police officer with no prior disciplinary record negotiated a penalty of 10 vacation days for failing to bring a copy of summonses issued and Activity Logs to TVB and failing to make complete entries regarding the summonses in his Activity Log resulting in Not Guilty dispositions on four cases.

Case No. 2011-5096, August 28, 2012, in which a five-year officer was unprepared at TVB, resulting in the dismissal of four summons cases. The officer forfeited 10 vacation days.

Case No. 2012-7291, August 28, 2012, in which an eighteen-and-a-half-year police officer, with no prior disciplinary record, initially conferenced a penalty of 10 vacation days. That penalty was disapproved by the Police Commissioner and the officer ultimately accepted a penalty involving the loss of 30 vacation days. The officer in that case had failed to bring copies of the summonses to TVB resulting in the dismissal of fourteen summonses. The officer was also charged with failing to make complete entries in his Activity Log related to five traffic summonses that were issued to motorists on two additional dates.

Case No. 2012-7279, November 13, 2012, in which an eight-year police officer, with no prior disciplinary history, negotiated a penalty of 10 vacation days for being unprepared at TVB, resulting in the dismissal of all eight summonses she was called to testify on that day.

Case No. 2012-7312, December 10, 2012, in which a six-year member was unprepared at TVB. As a result two summonses involving two motorists were dismissed.

That officer forfeited 5 vacation days. It should be noted that the officer was able to testify on five of the seven summonses scheduled and heard that day.

Case No. 2011-5185, January 18, 2013, in which a thirteen-year police officer with no prior disciplinary appeared late at TVB resulting in the dismissal of 12 summons cases. A conferenced penalty of 15 vacation days was disapproved by the Police Commissioner and the officer ultimately forfeited 20 vacation days.

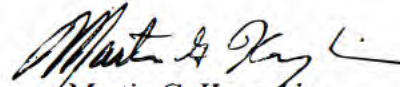
Case No. 2011-5300, a fourteen-year police officer testified in numerous cases on two dates at TVB, however on each of those two dates he was unprepared with regard to summonses issued to two motorists for a total of four motorists whose summonses were dismissed. The officer accepted a 10 vacation day penalty on May 2, 2013, which was disapproved by the Police Commissioner on June 12, 2013, with a new penalty that the officer forfeit 5 vacation days.

A slightly different set of facts was present in *Case No. 1975-2010, August 1, 2012*. In that disciplinary action a seven-year officer forfeited 15 vacation days. The officer had been unprepared at TVB. On the first date on which his case appeared at TVB he did not have his copy of the summons nor did he have his Activity Log. The case was adjourned and on the return date the officer was again unprepared resulting in the dismissal of the summons case on that day. The officer in this disciplinary case was also discourteous while at TVB on the first adjournment date in that he was whispering and passing notes with the motorist resulting in his being admonished by the Judge.

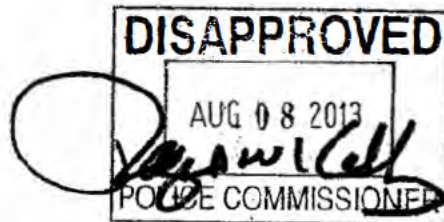
In this case, Respondent failed to appear at TVB resulting in the dismissal of all of his cases that were scheduled and heard on the TVB calendar that day. Considering penalties that have been imposed in other cases dealing with the issue of failing to be

prepared at TVB, the Department's recommendation is appropriate and takes into consideration Respondent's productivity in issuing summonses. It is therefore recommended that Respondent forfeit 10 vacation days.

Respectfully submitted,



Martin G. Karopkin
Deputy Commissioner – Trials



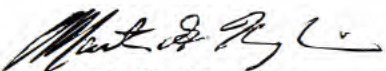
POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER GUSTAVO PAZ
TAX REGISTRY NO. 916405
DISCIPLINARY CASE NO. 2012-8009

In 2010 and 2011, Respondent received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. He was rated 3.0 “Competent” in 2009. He has been awarded four medals for Excellent Police Duty. [REDACTED]

Respondent has been the subject of one prior disciplinary adjudication. In 2011, he forfeited 30 vacation days after pleading guilty to twice causing false entries to be made in Department records by indicating inaccurate information on his Monthly Activity Report and for failing to prepare a Stop, Question, and Frisk Report.

For your consideration.


Martin G. Karopkin
Deputy Commissioner – Trials